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SUPREME COURT PRACTICE BRIEF IN OPPOSITION TO CERTIORARI

NO. 72-1705

IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

MARGARET CARINI

Petitioner

vs.

ZONING BOARD OF APPEALS
OF THE TOWN OF WEST HARTFORD

Respondent

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE UNITED STATES

BRIEF FOR RESPONDENT IN OPPOSITION

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CITATIONS

Margaret Carini v. Zoning Board of Appeals, Town of West Hartford, Supreme Court, State of Connecticut [October Term, 1972], XXIV CLJ 26.

Welch v. Swasey, 214 U.S. 91.

Zahn v. Board of Public Works of Los Angeles, 274 U.S. 325.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1973

NO. 72-1705

MARGARET CARINI

vs.

TOWN OF WEST HARTFORD

On a Petition for a Writ of Certiorari to the Supreme Court of the United States

BRIEF FOR RESPONDENT IN OPPOSITION

OPINIONS BELOW

Hamill, J., Court of Common Pleas, Hartford County, State of Connecticut, found that the Plaintiff (Appellant) was an aggrieved person, and found further: "Because of the proximity of local boards to local circumstances and conditions, their decisions should be overruled only when it is found that they have not acted fairly, with proper motives and upon valid reasons. Such is not found here." (May 4, 1971)

The Supreme Court, State of Connecticut (October Term, 1972) XXIV CLJ 26 held: "The plaintiff's (Appellant's) claim of arbitrariness on the part of the zoning board of appeals cannot be sustained".

JURISDICTION

The claimed jurisdictional requisites are set forth in the petition.

QUESTION PRESENTED

A. Whether the Zoning Board of Appeals acted illegally, or unreasonably or abused its discretion in denying the application of the plaintiff for a variance of the respondent's zoning ordinance to permit continued use of said premises as a rooming house.

B. Whether the Zoning Board of Appeals denied the Petitioner the equal protection of laws guaranteed by the Fourteenth Amendment by denying her a rooming house license.

STATEMENT

The petitioner is the owner of premises located at 739 Prospect Avenue in West Hartford, Connecticut, which consist of a residence and a garage in the rear yard. The main house is a three-story building containing eighteen rooms, of which there are two bedrooms on the first floor, four bedrooms on the second floor and four bedrooms on the third floor. The garage in the rear contains an oil burner and an oil tank on the first floor and three rooms on the second story. Said premises are in an R-10 residential zone.

The petitioner purchased the premises in 1966 at which time, the zoning regulations of the respondent were and still are in effect and a matter of public record.

In 1967 the Petitioner brought an action appealing from the revocation of her rooming house license to the Court of Common Pleas for Hartford County, State of Connecticut, which appeal was denied. The basis of that decision was that it was an improper method of procedure and therefore, the petitioner could not prevail. In its memorandum of decision, the Court went further and suggested correct steps that could be taken by the petitioner.

In the matter of *John P. Sullivan et al v. West Hartford Building Inspector* (Court of Common Pleas, in and for the

County of Hartford, #105312, 29CS 439), the Court held that mandamus does not lie in the situation presented and the relief sought was denied.

On June 5, 1969 the plaintiff filed an application with the Zoning Board of Appeals of the Town of West Hartford requesting a variance to permit the conduct of a rooming house on these premises. After a full hearing on June 25, 1969 said application was denied.

At the time of the hearing before the West Hartford Zoning Board of Appeals, these premises were used as a residence for fourteen retardates in the main building and four roomers in the rooms above the garage, in addition to a paid housekeeper and a male board. The record is not clear as to whether those occupying the garage area were retardates or not.

The plaintiff filed an appeal in the Court of Common Pleas in Hartford County, which appeal was denied. This decision was appealed to the Supreme Court of Errors of the State of Connecticut which upheld the lower court's decision.

ARGUMENT

The issue in the present case is uniquely narrow and no amount of strained semantics can convert it into one warranting review by this Court on certiorari. We are here concerned only with the jurisdiction of a zoning authority of a governmental agency in exercising its police power for the general plan of the community and must be in accordance with a comprehensive plan. The area in which the premises involved are located contains many homes of similar size occupied by private families. The petitioner refers to other rooming houses operating with a license. This is not a matter of record in either the original action or in the appeal to the Supreme Court of the State of Connecticut. The premises involved in the case of *John P. Sullivan et al v.*

West Hartford Building Inspector are being operated without a license. Respondent has taken no action respecting same for the reason that it is waiting a final determination in the instant case. It has been delayed from enforcing its zoning ordinances by the successive appeals which have been filed in this matter. The respondent further points out to this Court that no rooming houses licenses have been issued by the respondent in residence R-10 zones or any other residence zones since 1967. Petitioner's claim of discrimination in the instant case has no basis. The respondent has no prejudice as to retardates. In fact the writer of this brief is familiar with the program providing for housing for retardates outside of an institution and is highly in favor of it. She has participated in a small way and has had personal contacts with other retardates in the same situation. This is an outstanding program, but only when it is properly administered and properly supervised, does it function in the interests of the retardates who are allowed to participate in it.

The respondent does not concede, and in fact contests, the validity of the petitioner's claim that she has been denied equal protection of laws guaranteed by the Fourteenth Amendment. Her position is in no way different from that of other owners of large homes. On the facts and the law involved the decision of the Supreme Court of the State of Connecticut was manifestly correct and no other result could have been reached. Manifestly, there is no important correction of federal law requiring decision by this Court. In 274 US 325 the Court held that where the question whether the determination of a city council that a certain district of the city shall be included in a particular classification of a comprehensive zoning plan was unreasonable, arbitrary, or unequal exercise of power is fairly debatable, the court will not substitute its judgment for that of the legislative body, and the conclusion of the latter will not be disturbed. *Zahn v. Board of Public Works of Los Angeles, Ohio ex rel. Clarke v. Deckebach,* 274 US 392.

Zoning regulations in effect in the Town of West Hartford since 1924 have made no provision for a rooming house in an R-10 residential district, other than an accessory use limited to three or less persons in addition to the family residing in the dwelling. Accordingly, even though the plaintiff has had a rooming house license, she has been operating same, not as a non-conforming use, but as an illegal use, and petitioner admits this is a fact in her brief filed with her appeal to the Supreme Court of Connecticut (III Argument page 3).

Plaintiff's application is for a variance for use as a rooming house as presently used. Actually, the use being made is not that of the usual rooming house, but as a use more in the nature of an out-patient institution.

I. THE DECISION BELOW IS CLEARLY CORRECT

After a searching examination and analysis of the situation based on existing laws and previous decisions, the Court concluded that the denial by the Zoning Board of Appeals of the Respondent was clearly correct. It should be noted that the petitioner's arguments as to respondent's claimed prejudice against retardates and the court's decision in the matter of *John P. Sullivan et al v. West Hartford Building Inspector, supra,* citations were brought to the attention of the Court. These were no doubt considered by the Court and were dismissed. In the matter of *John P. Sullivan et al v. West Hartford Building Inspector, supra,* the Court did not rule on the question of the authority of the building inspector, or the subject of zoning, but, in fact, held that the action seeking a mandamus was an improper method of procedure and dismissed the complaint.

II. THERE IS NO CONFLICT OF DECISION

Petitioner asserts that the decision of the Court in the case of *John P. Sullivan et al v. West Hartford Building*

Inspector has changed the law and further claims that the advice of the Town's Corporation Counsel should prevail. It is a well established principal of law that a decision of a lower court cannot overrule the existing law as established by the Supreme Court of the State. It is obviously absurd that a statement by a Town Corporation Counsel can accomplish such an end. There is no conflict in the numerous decisions of the Supreme Court of Errors of the State of Connecticut.

Washington ex rel. Seattle Title Trust Co. v. Roberge, 278 US 116, held: "Zoning ordinances must find their justification in the police power exerted in the interest of the public....

"The Court cannot say as a matter of law that the end in view in the passage of a zoning ordinance was not sufficient to justify the exclusion of all industries from sections set apart for residence, although some industries of an innocent character may fall within the proscribed class". Held: "That industrial development will be diverted from its natural course by a zoning ordinance, to another course whereby injury to the residential public will be obviated, is not alone sufficient to render a zoning ordinance unconstitutional.

"When a zoning ordinance is attacked upon the broad ground that its mere existence, by materially and adversely affecting values and curtailing opportunities of the market, constitutes a present and irreparable injury, the court will not scrutinize its provisions sentence by sentence to ascertain by process of piecemeal dissection whether there may be here and there provisions of a minor character, or relating to matters of administration, or not shown to contribute to the injury complained of, which, if attacked separately, might not withstand the test of constitutionality."

The great majority of cases in similar situations have upheld decisions of zoning authorities, as it did in this particular instance. The Supreme Court of the State of Con-

necticut held that: "A municipality cannot be prevented from enforcing its zoning regulations.

III. THERE IS NO IMPORTANT QUESTION OF FEDERAL LAW.

Petitioner claims that she has been denied the equal protection of laws guaranteed by the Fourteenth Amendment. However, there is no citation or facts to establish her contention.

Conversely, the Courts have held to the contrary. *Washington ex rel. Seattle Title Trust Co.*, Roberge, 278 US 116.

Euclid v. Amber Realty Co., 272 US 365

Aunt Hack Pidge Estates Inc. v. Planning Commission, 160 Conn. 109, at 114 and 117. In *Carini v. Zoning Board of Appeals of the Town of West Hartford*, supra, the court said: The Plaintiff has not demonstrated in the record that the hardship occasioned by enforcement of the zoning ordinance is any different in kind from the generally affecting properties in the same zoning district. *Garibaldi v. Zoning Board of Appeals*, 163 Conn. (33 Conn. L.J., No. 52, pp. 1,2); *Belknap v. Zoning Board of Appeals*, 155 Conn. 380, 383, 232 A.2d 922; *Ward v. Zoning Board of Appeals*, supra, 143.

The discrimination or classification made between the commercial and residential sections of Boston, by Mass. Pub. Acts 1904, chap. 333, and Acts 1905, chap. 383, limiting the maximum height of buildings in the commercial district to 125 feet, and the residential districts to from 80 to 100 feet, will not, in the face of a decision of the highest state court, upholding such legislation as passed in the exercise of the police power, be held so unreasonable as to deprive the owner of property in the residential section of its profitable use without justification, and hence to take his property without due process of law unless compensation be given him for such invasion of his rights, even though esthetic considerations may have entered into the reasons for the

passage of such enactments. *Welch v. Swasey,* 214 U.S. 91, 29 S.Ct. 567.

A comprehensive zoning ordinance regulating the character of buildings which lawfully may be erected in designated districts is not repugnant to the due process of law and equal protection clauses of the Fourteenth Amendment to the Federal Constitution in its operation against one denied a permit to erect a business building in a district restricted to residential purposes. *Zahn v. Board of Public Works of Los Angeles,* 274 U.S. 325, 47 S.Ct. 594.

In Petitioner's Brief filed in the Supreme Court, State of Connecticut, she admits that she has been operating the rooming house, not as a non-conforming use, but as an illegal use. (III ARGUMENT Page 3)

CONCLUSION

For the foregoing reasons it is respectfully submitted that this petition for a writ of certiorari should be denied.

Respectfully submitted,

FANNIE HIMMELSTEIN,
Counsel for Respondent

Dated: July 12, 1973